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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,865	11/21/2003	Thomas A. McDonald	QUA09 P-301	3064

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EXAMINER
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NGUYEN, CHI Q

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/719,865

**Applicant(s)**

MCDONALD ET AL.

**Examiner**

Chi Q Nguyen

**Art Unit**

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Exhibit A

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informalities: In the specification page 11, line 18, the "nose portion" should be labeled as "13".

Appropriate correction is required.

### ***Claim Objections***

Claim 27 is objected to because of the following informalities: in line 1, the applicant is advised to remove "and the like" and "of the type". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baker (US 6,681,527).

Baker shows in figures 1 and 2, a gutter protection system comprising an impermeate cover or top cap 15 with a rearward portion 21 extending along an associated roof, a medial portion 18 extending over an interior portion of an associated gutter, and a curved forward portion 16 (fig. 2), a universal end cap C (see attached figure 2) comprising a general flat, rigid cover panel having an upper edge, a lower edge, and opposite side edges, and including a substantially rectangular lower portion,

a pair of curved nose portions N projecting outwardly from the opposite side edges of the cover panel adjacent the upper edge, a mounting flange V extending along at least a portion of the upper edge of the cover panel, and extending laterally inwardly I a generally perpendicular relationship with the cover panel.

In regarding to claims 1, 2, 4-6, 8, 10-12, 16-19, 21, and 23-26, Baker teaches the structural elements for the gutter cover as discussed above. However, Baker does not teach expressly a retainer such as screw, fastening the mounting flange to the top cap at either one of the opposite ends of the rain gutter debris guard and the end cap has a one-piece construction. As shown in figure 1, the end cap C is one piece and integrated with the top cap 15, therefore, the examiner considers this would have been obvious functional equivalent to have a retainer to fastening as taught by the applicant.

In regarding claims 3, 15, the end cap is constructed of aluminum

In regarding claims 7, 9, 20, Baker teaches the structural elements for the gutter cover as discussed above except for the opposite side edges of the cover panel at the lower portion thereof are generally parallel, and orient substantially perpendicular to the upper edge and the lower edge of the cover panel, and opposite lower corners which extend diagonally between the side edges and the lower edge. It would have been an obvious matter of design choice to have the lower portion side edges are parallel and perpendicular to the upper edge and the lower edge of the cover panel, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re*

*Rose, 105 USPQ (CCPA 1955).* The motivation for doing so would have been to accurately fit and encompass the gutter.

In regarding claims 13, 14, 22, at least one mounting bracket 30, 31 supporting the top cap 15 (fig. 2).

In regarding method claim 27, Baker teaches the structural elements for the gutter cover as stated above. However, Baker does not teach expressly the method steps as taught by the applicant. Examiner considers the to be obvious method of setting up device because in deflecting debris, one must obviously position gutter along a building eaves, installs top cap over the gutter, secures the top cap over bracket, fastening end cap at the end of the top cap as shown in figure 2 by Baker.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Carreiro (US 4,190,988), Baumgarth (US 4,998,386), and Tuohey et al. (5,437,138) teach gutter end caps

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

car  
9/18/04



Carl D. Friedman  
Supervisory Patent Examiner  
Group 3600

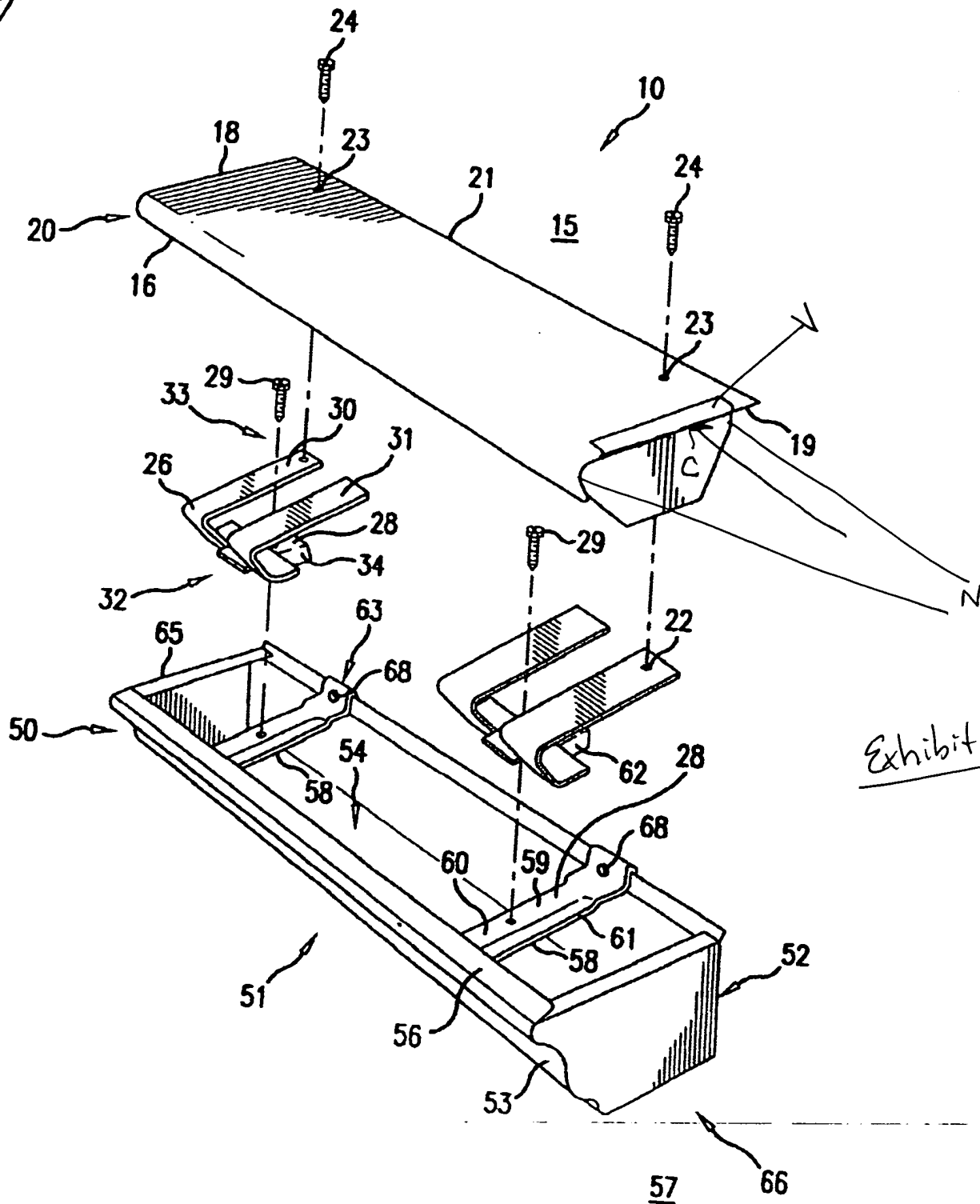


Exhibit A

FIG.2